

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CHARLES E. McCLINTON and DEPARTMENT OF THE AIR FORCE,  
AIR RESERVE PERSONNEL CENTER, Aurora, Colo.

*Docket No. 97-479; Submitted on the Record;  
Issued March 18, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied waiver of the overpayment that occurred in appellant's case.

The Board has duly reviewed the record and finds that the Office properly denied waiver of the overpayment.

Section 8129(a) of the Federal Employees' Compensation Act<sup>1</sup> provides that where an overpayment of compensation has been made because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which an individual is entitled. Section 8129(b) describes the only exception to the Office's right to adjust later payments or to recover overpaid compensation:

"Adjustment or recovery by the United States may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of [the Act] or would be against equity and good conscience."<sup>2</sup>

In its September 3, 1996 decision, the Office found that appellant was not at fault in the creation of the overpayment that occurred from November 1, 1994 to March 30, 1996 because he received compensation at the three-quarter rate but was entitled to only the two-thirds rate. The fact that an individual is without fault in the matter of an overpayment, however, does not, by itself, preclude the Office from adjusting later payments or recovering the overpayment. Section 8129(b) prohibits adjustment or recovery when the individual is without fault and when adjustment or recovery would defeat the purpose of the Act or would be against equity and good

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Id.* at § 8129(b).

conscience. The guidelines for determining whether adjustment or recovery would defeat the purpose of the Act or be against equity and good conscience are respectively set forth in sections 10.322 and 10.323 of Title 20 of the Code of Federal Regulations.

Section 10.322(a) provides that recovery of an overpayment will defeat the purpose of the Act if recovery would cause hardship by depriving the overpaid individual of income and resources needed for ordinary and necessary living expenses and if the individual's nonexempted assets do not exceed a resource base of \$3,000.00 or \$5,000.00 if the individual has a spouse or one dependent.<sup>3</sup> Section 10.323 provides that recovery of an overpayment is considered to be against equity and good conscience if the overpaid individual was not entitled to benefits and would experience severe financial hardship in attempting to repay the debt, with "severe financial hardship" determined by the same criteria set forth in section 10.322, or if the individual, in reliance on the overpaid compensation, relinquished a valuable right or changed his position for the worse.<sup>4</sup>

The Form OWCP-20 overpayment recovery questionnaire is designed to obtain the financial information necessary to determine whether adjustment or recovery would defeat the purpose of the Act. When the Office issued its preliminary determination on July 9, 1996, it explained the need for financial information and requested that appellant complete and submit an attached overpayment recovery questionnaire together with supporting financial documentation. Appellant requested waiver and completed the form on July 12, 1996 but submitted no supporting financial documentation. The Office held a telephone conference with appellant on August 12, 1996 to discuss the financial information necessary. The Office requested that appellant submit copies of checking and savings account statements for the last two to three months. Appellant submitted a statement regarding his income tax returns and a copy of a hospital bill for \$93.98 but did not submit the financial statements requested.

Although appellant is without fault in the matter of the overpayment, he nonetheless bears responsibility for providing the financial information necessary to support his request to waive recovery of the overpayment. Section 10.324 of Title 20 of the Code of Federal Regulations states in this regard:

"In requesting waiver of an overpayment, either in whole or in part, the overpaid individual has the responsibility for providing the financial documentation described in section 10.322 as well as such additional information as the Office may require to make a decision with respect to waiver. Failure to furnish the information within 30 days of request shall result in the denial of waiver and no further requests for waiver shall be entertained until such time as the requested information is furnished."<sup>5</sup>

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<sup>3</sup> 20 C.F.R. § 10.322(a).

<sup>4</sup> *Id.* at § 10.323.

<sup>5</sup> 20 C.F.R. § 10.324.

Whether to waive an overpayment of compensation is a matter that rests within the Office's discretion pursuant to statutory guidelines.<sup>6</sup> The Board has long held that when a claimant fails to provide the financial evidence necessary to support his request for waiver, the Office commits no abuse of discretion in denying that request.<sup>7</sup> Accordingly, the Board finds that the Office did not abuse its discretion in refusing to waive recovery of the overpayment in the present case.<sup>8</sup>

The September 3, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.  
March 18, 1999

George E. Rivers  
Member

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>6</sup> See *William J. Murphy*, 40 ECAB 569 (1989).

<sup>7</sup> E.g., *Yolanda Librera (Michael Librera)*, 37 ECAB 388 (1986); *Joseph H. Light*, 13 ECAB 358 (1962).

<sup>8</sup> The record indicates that appellant subsequently submitted copies of his bank statements. The record also shows, however, that the Office has not issued another decision on waiver or entertained any further request for waiver since appellant furnished the requested information. The Board's jurisdiction is therefore limited to a review of the Office's September 3, 1996 decision and the evidence that was before the Office at that time. 20 C.F.R. § 501.2(c).